

# MARKET BULLETIN

REF: Y4307

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<b>Title</b>	Capacity Markets
<b>Purpose</b>	To give feedback to the market following consultation on proposals to amend the disclosure requirements for Bilateral Arrangements.
<b>Type</b>	Event
<b>From</b>	Chairman of the Capacity Transfer Panel
<b>Date</b>	27 August 2009
<b>Deadline</b>	-
<b>Related links</b>	None

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In June 2009, the Capacity Transfer Panel (the "Panel") consulted on proposals to amend the disclosure requirements rules for bilateral arrangements (see market bulletin Y4287). The consultation period closed on 17 July 2009. The Panel received a variety of responses from the Association of Lloyd's Members, the High Premium Group, members' agents and others. The Panel subsequently met to consider the responses.

## 1. Feedback

The majority of the respondents were of the view that there should not be any amendments made to the disclosure requirements for bilateral arrangements because mandatory prior disclosure might inhibit parties from trading through bilateral arrangements. Those respondents who supported the amendment of the disclosure requirements were, amongst other reasons, of the view that the increase in transparency would avoid any potential conflicts for a members' agent in fulfilling its fiduciary duties to all its members.

Having given very careful consideration to the issues and to all of the representations that they received, the Panel were of the view that the current disclosure requirements for bilateral arrangements are appropriate. Accordingly the disclosure requirements will not be amended for the 2009 capacity auctions.

2. Action to be undertaken by Members' Agents

The Panel was concerned to ensure that each members' agent properly manages any conflicts of interest that may arise if it is going to be in possession of information relating to a bilateral arrangement and will also be acting for members trading in the capacity auctions prior to the bilateral arrangement being disclosed in accordance with the rules. That may arise, for example, where a members' agent is acquiring capacity through a bilateral arrangement for a MAPA.

Management of such a conflict of interest is a matter for the members' agent in question and inappropriate management will have regulatory and / or disciplinary consequences.

However, the Panel concluded that appropriate management of such a conflict will involve, as a minimum, the board of the members' agent –

- a. formulating a control of conflict of interest policy relating to bilateral arrangements setting out how such a conflict of interest may arise and how it would be managed. The policy must set out what 'Chinese walls' will be established and why, who will be within the 'Chinese walls' and how they will be operated in practice. In particular, the policy must provide for complete and effective confidentiality and independence between those in possession of information relating to a bilateral arrangement and those advising dealing with or administering the capacity auctions including the submission of bids. The policy must be in terms readily comprehensible to its members. The policy must be signed by two members of the board; and
- b. giving an appropriate risk warning to all of its members. The risk warning must be given in writing. It must include or accurately summarise the control of conflict of interest policy. It must be given adequate prominence and it must be in terms which would be readily comprehensible by members. In particular, it must say if there is a risk that members may deal in the auction on less favourable terms than the bilateral arrangement.

Lloyd's has communicated the Panel's views to members' agents and asked that they notify Lloyd's if they will be formulating a conflict of interest policy relating to bilateral arrangements ahead of the 2009 auctions which start on 9 September.

**Nothing in this Market Bulletin affects the existing obligations of participants in the auctions to disclose Relevant Information pursuant to Rule 20 of the Auction Rules 2009 and Paragraph 9 of the Capacity Auctions and Bilateral Arrangements Explanatory Guide 2009.**

Any questions with regard to this Market Bulletin should be addressed to Paul Thornton (telephone s020 7327 6281, e-mail paul.thornton@lloyds.com).